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Official Electronic Letterhead

May 6, 2020

Via Email: Andrew.D.Kelly@usace.army.mil

Colonel Andrew Kelly
District Commander
U.S. Army Corps of Engineers, Jacksonville District
701 San Marco Boulevard
Jacksonville, FL 32207

Dear Colonel Kelly,

**Subject: Request to Reconsider Policy Decision to Not Apply the
WRDA2000 Savings Clause to Lake Okeechobee
Operations**

Palm Beach County (County) supports efforts by the U.S. Army Corps of Engineers (Corps) to re-evaluate Lake Okeechobee operations through the Lake Okeechobee System Operating Manual process and to restore ecosystems throughout the Central and Southern Florida (C&SF) water management system. The County, like many South Florida governments, relies on the C&SF system to protect its citizens from flooding and to protect public water supply from depletion and salt water intrusion.

I write to you during this unprecedented global emergency requesting reconsideration of a recent Corps policy decision to not apply a critical element of the Water Resources Development Act of 2000 (WRDA2000) intended to protect flood protection and water supply, commonly referred to as the Savings Clause (Section 601(h)(5) of Public Law 106-541).

In 2000, Congress passed WRDA2000 authorizing an ecological restoration plan for America's Everglades ecosystem. Today, we know it as the Comprehensive Everglades Restoration Plan or CERP. CERP directed the Corps and State of Florida, as the local sponsor, to restore our natural environment, *while* providing for our water-related needs, including water supply and flood protection for people and businesses. CERP was historic. It was passed by Congress after the State of Florida, the Corps, and diverse businesses, municipalities, farmers, and environmental groups spent nearly a decade developing it. The County supported the passage of CERP and continues to be committed to its success.

The theme of CERP was to "make the water pie bigger" through both operational modifications and new infrastructure to store water for both the environment and people. To secure successful passage, WRDA2000 established reciprocal protections that reserved water specifically identified for ecosystem restoration *and* preserved the "existing" levels of service for flood protection



Colonel Andrew Kelly
May 6, 2020
Page 2 of 2

and water supply, which must be applied throughout the decades of CERP implementation. The Savings Clause provides that the Corps must preserve the levels of service for flood protection and quantity of water available for urban and agricultural use that were in existence *on the date of enactment of the Act*, i.e., the year 2000.

The management of Lake Okeechobee was an integral part of WRDA2000 when it was passed by Congress and continues to be an essential element to ensure the C&SF water management system protects public water supply. However, in December 2019, the County learned of the Corps' policy decision that Lake Okeechobee operations are not part of WRDA2000 and therefore, the water supply protections in the Savings Clause do not apply.

This decision by the Corps, 20 years after Congress provided direction, is contrary to the language and intent of WRDA2000, does not protect the legal uses of water in place in 2000 and makes permanent the diminished water supply that resulted from the temporary lowering of Lake Okeechobee to repair the Herbert Hoover Dike.

The Corps' tactics to modify the C&SF system in pursuit of ecosystem restoration are not boundless. The Corps must follow the laws enacted by Congress. In enacting the Savings Clause, Congress acknowledged that state and local entities cannot support ecosystem restoration at the expense of communities that rely on the C&SF system for flood protection and public water supply. In addition, when the Corps makes a policy decision to avoid applying established law, the Corps leaves stakeholders in a state of unpredictability, and unpredictability undermines support for restoration.

It is imperative that water supply provided by Lake Okeechobee be preserved and protected to ensure the health and safety of the more than 1.5 million residents of Palm Beach County. Please reconsider your decision to not apply the WRDA2000 Savings Clause to Lake Okeechobee operations.

Sincerely,

Dave Kerner
Mayor, Palm Beach County

cc: Major General Scott A. Spellman, U.S. Army Corps of Engineers
Lt. Colonel Todd Polk, U.S. Army Corps of Engineers
Drew Bartlett, South Florida Water Management District
Governing Board Members, South Florida Water Management District
Members, Palm Beach County Board of County Commissioners
Verdenia Baker, County Administrator
Jeremy McBryan, County Water Resources Manager